

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0461, Appeal of Tina Silk, the court on May 23, 2007, issued the following order:

The employee, Tina Silk, appeals an order of the New Hampshire Compensation Appeals Board (board) denying her request for payment of bills for chiropractic treatment. See RSA 281-A:23 (Supp. 2006). She argues that the board erred in: (1) failing to apply principles of collateral estoppel/res judicata; (2) finding that there was no documentation of compensable neck injury; (3) failing to give substantial weight to the opinion of her treating physicians; and (4) finding her treatment excessive and ineffective despite her testimony that the treatment was necessary to reduce the pain in her hands and allow her to work. We vacate and remand.

We will reverse the board's decision only for errors of law or if we find by a clear preponderance of the evidence that the order is unjust or unreasonable. See RSA 541:13 (1997); Appeal of Hypertherm, 152 N.H. 21, 23 (2005). If competent evidence supports the board's decision, we will affirm its determination even if other evidence would lead to a contrary result. See Appeal of Hooker, 142 N.H. 40, 47 (1997).

In this case, the employee was awarded benefits and payment of certain chiropractic bills in a 2004 decision by the board. She subsequently sought payment for chiropractic bills incurred following her move to Texas; her request was denied by the board in 2006.

In denying the employee's request in 2006, the board found that all treatment to her neck/cervical spine was unrelated to her compensable wrist injury. In so finding, it stated that the 2004 order noted bilateral wrist injuries only and, further, that the bills that were contested in 2004 were paid due to the lack of a contrary medical opinion.

A review of the 2004 order does not support these conclusions. In its findings in 2004, the board cited testimony by the then treating chiropractor that the employee needed treatment for her spine as she had overcompensated for her wrist injuries, causing problems with her cervical spine. That the employer did not offer contrary medical evidence does not affect the weight to be given to the board's finding that the employee met her burden of proof in 2004 and that the treatment for her spine was related to the compensable wrist injury.

That the employee met her burden of proof in 2004, however, did not satisfy her burden in the subsequent proceedings to establish that continuing

treatment was reasonable and that the nature of her injury required that it continue. See Appeal of Lalime, 141 N.H. 534, 537 (1996). The burden then shifted to the employer to rebut the claim. Id.

In reaching its 2006 decision that the treatment for which payment was sought was unreasonable, the board relied upon the report submitted by the carrier's expert. The expert opined that the treatment had been ineffective because it had continued without resolution of the employee's complaint. The report also stated that the contested treatment was palliative in nature.

Whether the contested treatment is reasonable, however, is not outcome dependent; rather, the correct analysis is whether the employee presented objective evidence that it was reasonable to seek further treatment, including treatment that is palliative. Id.; see Appeal of Levesque, 136 N.H. 211, 214 (1992) (plain language of RSA 281-A:23 does not limit compensable medical treatments to those that are remedial).

Because the board's findings regarding its 2004 order were erroneous and because we cannot determine whether the board applied the correct test in determining whether the treatment for which reimbursement was sought was compensable, we vacate its order and remand.

Vacated and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**